

COPY

1. This is a civil action brought by the Government, for and on behalf of the Administrator of the Environmental



Protection Agency ("EPA"), for injunctive relief and civil penalties pursuant to Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(b), for violations of Section 112 of the Act, 42 U.S.C. § 7412, and of the National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 C.F.R. Part 61, Subpart M, §§ 61.140-61.156.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and notice of commencement of this action has been provided to the New York State Department of Environmental Conservation as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

3. Venue is proper in this judicial district pursuant to 42 U.S.C. § 7413(b) and pursuant to 28 U.S.C. § 1391.

DEFENDANTS

4. Defendant New York City School Construction Authority ("SCA") is a New York State Public Benefit Corporation, located at 30-30 Thompson Avenue, Long Island City, New York, with responsibility for managing construction projects in New York City (the "City") public school buildings, including projects involving the removal of asbestos-containing materials. See N.Y.

Pub. Auth. Law §§ 1725-47 (McKinney Supp. 1996).

5. Defendant Admiral Abatement ("Admiral") is and was at all times relevant to this complaint a corporation organized under the laws of the State of New York, with its principal place of business at 60 Gansevoort Street, New York, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

6. Defendant Asbestos Pro's, Inc. ("Asbestos Pro's") is and was at all times relevant to this complaint a corporation organized under the laws of the State of New York, with its principal place of business at 397 Fifth Avenue, Brooklyn, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

7. Defendant Certified Asbestos Corporation ("Certified") is and was at all times relevant to this complaint a corporation organized under the laws of the State of New York, with its principal place of business at 111-20 Jamaica Avenue, Richmond Hill, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

8. Defendant CST Environmental, Inc. ("CST") is and was at all times relevant to this complaint a corporation organized under the laws of the State of California, with its principal

place of business at 2100 East Via Burton Street, Anaheim, California, and an office at 3210 Dell Avenue, North Bergen, New Jersey, and is and was engaged in the business of removing asbestos-containing materials from buildings.

9. Defendant EWT Contracting, Inc. ("EWT") is and was at all times relevant to this complaint a corporation organized under the laws of the State of Delaware, with its principal place of business at 575 Washington Street, New York, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

10. Defendant Kiss Construction ("Kiss") is and was at all times relevant to this complaint a corporation organized under the laws of the State of New York, with its principal place of business at 40 Underhill Boulevard, Suite 2D, Syosset, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

11. Defendant National Environmental Safety Company, Inc. ("National") is and was at all times relevant to this complaint a corporation organized under the laws of the State of New York, with its principal place of business at 37-39 30th Street, Long Island City, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

12. Defendant Trio Asbestos Removal Corporation ("Trio") is and was at all times relevant to this complaint a corporation organized under the laws of the State of New York, with its principal place of business at 14-20 129th Street, College Point, New York, and is and was engaged in the business of removing asbestos-containing materials from buildings.

13. All defendants herein are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

14. All defendants herein were "owner[s] or operator[s] of a . . . renovation activity" within the meaning of 40 C.F.R. § 61.141 at all times relevant to this complaint.

STATUTORY AND REGULATORY BACKGROUND

15. Asbestos is listed as a hazardous air pollutant under Section 112(b) of the Act, 42 U.S.C. § 7412(b).

16. Section 112(d)(1) of the Act, 42 U.S.C. § 7412(d)(1), required the Administrator of EPA ("Administrator") to establish NESHAPs for hazardous air pollutants.

17. The asbestos NESHAP regulates, inter alia, asbestos emissions from renovation activities, including stripping, collection, transportation, and disposal of asbestos. 40 C.F.R. §§ 61.140-61.156.

18. The asbestos NESHAP further requires that EPA be

notified of asbestos renovations. 40 C.F.R. § 61.145(a)-(b).

19. Violation of the NESHAP constitutes a violation of Section 112 of the Act. 42 U.S.C. § 7412(f)(4).

20. Section 114(a) of the Act, 42 U.S.C. § 7414(a), authorizes the Administrator to require any person who owns or operates an emission source to "establish and maintain such records [and] make such reports" as the Administrator shall prescribe to determine whether any person is in violation of any emission standard.

21. Under 40 C.F.R. § 61.141, the term "regulated asbestos-containing material" ("RACM") is defined to include "friable asbestos material."

22. Under 40 C.F.R. § 61.141, the term "friable asbestos material" is defined to mean "any material containing more than 1 percent asbestos . . . that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure."

23. Under 40 C.F.R. § 61.141, the term "facility" is defined to include "any institutional, public, industrial, or residential structure, installation, or building."

24. Under 40 C.F.R. § 61.141, the term "facility component" is defined to mean "any part of a facility including equipment."

25. Under 40 C.F.R. § 61.141, the term "renovation" is

defined to mean "altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component."

26. Under 40 C.F.R. § 61.141, the term "owner or operator of a . . . renovation activity" is defined to mean "any person who owns, leases, operates, controls, or supervises the . . . renovation operation."

27. Under 40 C.F.R. §§ 61.145(a)-(b), the owner or operator of a renovation activity must provide EPA with written notification at least 10 working days before beginning any asbestos stripping or removal work if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 260 linear feet (on pipes) or at least 160 square feet (on other facility components).

28. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to "commence a civil action for a permanent or temporary injunction" and for recovery of a "civil penalty of not more than \$25,000 per day of violation" against any person who violates Section 112 of the Act.

29. Between August and October 1993, the SCA retained each of the other defendants to remove RACM from City public schools under an accelerated asbestos remediation program.

30. On August 31, 1993, William J. Muszynski, the Acting Regional Administrator of EPA Region II, after receiving a briefing from the SCA concerning its accelerated asbestos remediation program, informed the SCA that:

The asbestos NESHAP requires that for any renovation involving more than the applicable amount of [R]ACM, EPA be 'notified' at least ten days prior to the scheduled start date of that renovation. I understand that the ten day notice requirement may work a hardship on your concerted effort to solve this unanticipated problem prior to the start of the new school year. For renovation work that you must do for the well being of the users of the school and you reasonably expect to be able to start and complete before the school year is to begin, we have already advised your office that we will view these jobs as emergencies and you have agreed to hand deliver 'notice' to EPA at least 24 hours prior to commencement. I am further advising you that this willingness to help deal with these small, immediate, short term renovations is not a waiver of the NESHAP notification requirement. We will continue to review this application of the emergency provision as we consider necessary.

31. Between July and September 1994, the SCA retained Asbestos Pro's to remove RACM from a number of City public schools.

32. On July 28, 1994, the SCA contacted EPA Region II seeking a waiver of the ten day notification requirements under

the asbestos NESHAP for asbestos abatement activities for approximately 70 schools.

33. By letter dated August 4, 1994, Conrad Simon, the Director of the Air and Waste Management Division for EPA Region II, declined to provide any waiver of the NESHAP reporting requirements.

FIRST CLAIM FOR RELIEF

34. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

35. In or around August or September 1993, the SCA retained Admiral to remove RACM from public schools in the City, including, but not limited to the following buildings: P.S. 227K, 6500 16th Avenue, Brooklyn, New York; Junior High School ("J.H.S.") 117M, 240 East 109th Street, New York, New York; P.S. 205aX, 2475 Southern Boulevard, Bronx, New York; Intermediate School ("I.S.") 52X, 681 Kelly Street, Bronx, New York; P.S. 120, 58th Avenue and 136th Street, Queens, New York; I.S. 74Q, 61-15 Oceania Street, Queens, New York; P.S. 44K, 432 Monroe Street, Brooklyn, New York; P.S. 41Q, 214-43 35th Avenue, Queens, New York; P.S. 18Q, 86-35 235th Court, Queens, New York; P.S. 28, 1861 Anthony Avenue, Bronx, New York; P.S. 68Q, 59-09 St. Felix Avenue, Queens, New York; and P.S. 34M, 730 E. 12th Street, New

York, New York.

36. On or about September 6, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 227K. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

37. On or about September 6, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from J.H.S. 117M. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

38. On or about September 6, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM,

from P.S. 205aX. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

39. On or about September 2, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from I.S. 52X. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

40. On or about September 4, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from I.S. 74Q. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

41. On or about August 13, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 120. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

42. On or about August 30, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 44K. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

43. On or about September 6, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 227K. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement

of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

44. On or about August 30, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 41Q. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

45. On or about August 30, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 18Q. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

46. On or about August 21, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM,

from P.S. 28. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

47. On or about August 14, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 68Q. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

48. On or about August 16, 1993, Admiral commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 34M. Neither the SCA nor Admiral provided the EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

49. Pursuant to Section 113(b) of the Act, 42 U.S.C.

§ 7413(b), the SCA and Admiral are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

SECOND CLAIM FOR RELIEF

50. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

51. In or around August 1993, the SCA retained Advanced Asbestos Removal Corp. ("Advanced") to remove RACM from public schools in the City, including, but not limited to the following schools: P.S. 70, 1691 Weeks Avenue, Bronx, New York; P.S. 14, 3041 Bruckner Boulevard, Bronx, New York; and I.S. 145, 33-34 80th Street, Queens, New York.

52. On or about August 23, 1993, Advanced commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 70. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

53. On or about August 23, 1993, Advanced commenced a

renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 14. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

54. On or about August 18, 1993, Advanced commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from I.S. 145. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

55. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA is subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

THIRD CLAIM FOR RELIEF

56. Plaintiff incorporates by reference the allegations

contained in paragraphs 1-33.

57. In or around September or October 1993, the SCA retained Asbestos Pro's to remove RACM from public schools in the City, including, but not limited to Midwood High School, Bedford Avenue and Glenwood Road, Brooklyn, New York.

58. On or about October 4, 1993, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Midwood High School. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at Midwood High School at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

59. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and Asbestos Pro's are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation project in violation of 40 C.F.R. § 61.145(b).

FOURTH CLAIM FOR RELIEF

60. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

61. In or around September 1993, the SCA retained Bali Industries, Inc. ("Bali") to remove RACM from public schools in the City, including, but not limited to P.S. 66, 1001 Jennings Street, Bronx, New York.

62. On or about September 25, 1993, Bali commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 66. The SCA did not provide EPA with written notification of their intention to perform the renovation activities at P.S. 66 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

63. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA is subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation project in violation of 40 C.F.R. § 61.145(b).

FIFTH CLAIM FOR RELIEF

64. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

65. In or around September 1993, the SCA retained Certified

to remove RACM from public schools in the City, including, but not limited to the following schools: P.S. 112, 25-05 37th Avenue, Queens, New York; and P.S. 241, 939 President Street, Brooklyn, New York.

66. On or about September 3, 1993, Certified commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 112. Neither the SCA nor Certified provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities at P.S. 112 as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

67. On or about September 6, 1993, Certified commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 241. Neither the SCA nor Certified provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities at P.S. 241 as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

68. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and Certified are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

SIXTH CLAIM FOR RELIEF

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

70. In or around October 1993, the SCA retained Consolidated Environmental Corporation ("Consolidated") to remove RACM from public schools in the City, including, but not limited to the following buildings: P.S. 53, 330 Durant Avenue, Staten Island, New York; P.S. 284K, 220 Watkins Street, Brooklyn, New York; P.S. 3, 108-55 69th Avenue, Queens, New York; P.S. 92, 700 East 179th Street, Bronx, New York; Midwood High School, Bedford Avenue & Glenwood Road, Brooklyn, New York; and P.S. 48, 1055 Targee Street, Staten Island, New York.

71. On or about November 2, 1993, Consolidated commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 53. The SCA did not provide EPA with written notification of their intention to perform the renovation project

at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

72. On or about October 20, 1993, Consolidated commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 284K. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

73. On or about November 1, 1993, Consolidated commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 3. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

74. On or about November 1, 1993, Consolidated commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM,

from P.S. 92. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

75. On or about October 15, 1993, Consolidated commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Midwood High School. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

76. On or about November 3, 1993, Consolidated commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 48. The SCA did not provide EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

77. Pursuant to Section 113(b) of the Act, 42 U.S.C.

§ 7413(b), the SCA is subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

SEVENTH CLAIM FOR RELIEF

78. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

79. In or around October 1993, the SCA retained CST to remove RACM from public schools in the City, including, but not limited to the following buildings: J.H.S. 126K, 424 Leonard Avenue, Brooklyn, New York; and P.S. 192, 500 West 138th Street, New York, New York.

80. On or about October 14, 1993, CST commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from J.H.S. 126K. Neither the SCA nor CST provided EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

81. On or about October 15, 1993, CST commenced a renovation project that involved the removal of at least 260

linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 192. Neither the SCA nor CST provided EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

82. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and CST are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

EIGHTH CLAIM FOR RELIEF

83. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

84. In or around October 1993, the SCA retained EWT to remove RACM from public schools in the City, including, but not limited to P.S. 116K, 515 Knickerbocker Avenue, Brooklyn, New York.

85. On or about October 8, 1993, EWT commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 116K. Neither the SCA nor EWT provided EPA with written notification of

their intention to perform the renovation activities at P.S. 116K at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

86. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and EWT are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation project in violation of 40 C.F.R. § 61.145(b).

NINTH CLAIM FOR RELIEF

87. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

88. In or around August 1993, the SCA retained Kiss to remove RACM from public schools in the City, including, but not limited to J.H.S. 210, 93-11 101st Avenue, Queens, New York.

89. On or about August 31, 1993, Kiss commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from J.H.S. 210. Neither the SCA nor Kiss provided EPA with written notification of their intention to perform the renovation project at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at

least 24 hours before commencement of the renovation activities.

90. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and Kiss are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation project in violation of 40 C.F.R. § 61.145(b).

TENTH CLAIM FOR RELIEF

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

92. In or around October 1993, the SCA retained Linear Abatement Corporation ("Linear") to remove RACM from public schools in the City, including, but not limited to the following buildings: P.S. 157, 850 Kent Avenue, Brooklyn, New York; and P.S. 174, 574 Dumont Avenue, Brooklyn, New York.

93. On or about October 13, 1993, Linear commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 157. The SCA did not provide EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

94. On or about October 16, 1993, Linear commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 174. The SCA did not provide EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

95. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA is subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

ELEVENTH CLAIM FOR RELIEF

96. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33

97. In or around August or September 1993, the SCA retained National to remove RACM from public schools in the City, including, but not limited to the following buildings: P.S. 286, 2525 Haring Street, Brooklyn, New York; P.S. 42, 71 Hester Street, New York, New York; P.S. 150, 40-01 43rd Avenue, Queens, New York; P.S. 8, Lindenwood Road & Park, Staten Island, New

York; Port Richmond High School, Innis Street & St. Joseph's Avenue, Staten Island, New York; P.S. 65, 158 Richmond Street, Brooklyn, New York; and P.S. 196, 71-25 113th Street, Queens, New York.

98. On or about September 7, 1993, National commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 286. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

99. On or about September 20, 1993, National commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 42. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

100. On or about September 6, 1993, National commenced a renovation project that involved the removal of at least 260

linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 150. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

101. On or about August 14, 1993, National commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 8. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

102. On or about August 21, 1993, National commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Port Richmond High School. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the

renovation activities.

103. On or about September 1, 1993, National commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 65. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

104. On or about September 17, 1993, National commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 196. Neither the SCA nor National provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

105. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and National are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

TWELFTH CLAIM FOR RELIEF

106. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

107. In or around September 1993, the SCA retained Trio to remove RACM from public schools in the City, including, but not limited to the following buildings: J.H.S. 172, 81-44 257th Street, Queens, New York; and P.S. 71, 62-85 Forest Avenue, Queens, New York.

108. On or about October 1, 1993, Trio commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from J.H.S. 172. Neither the SCA nor Trio provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

109. On or about October 1, 1993, Trio commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 71. Neither the SCA nor Trio provided EPA with written notification of their intention to perform the renovation activities at least 10 working days before commencement of the

renovation activities as required by 40 C.F.R. § 61.145, or at least 24 hours before commencement of the renovation activities.

110. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and Trio are each subject to a civil penalty of not more than \$25,000 per day per violation for failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

THIRTEENTH CLAIM FOR RELIEF

111. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33.

112. In or around July or August 1994, the SCA retained Asbestos Pro's to remove RACM from public schools in the City, including, but not limited to the following buildings: I.S. 113, 3710 Barnes Avenue, Bronx, New York; P.S. 127, 98th Street and 25th Avenue, Queens, New York; New Utrecht High School, 1601 80th Street, Brooklyn, New York; P.S. 196, 207 Bushwick Avenue, Brooklyn, New York; John Adams High School, 101 Rockaway Avenue, Brooklyn, New York; P.S. 92, 222 West 134th Street, Manhattan, New York; Newtown High School, 105-25 Horace Harding Expressway, Queens, New York; P.S. 57, 176 East 115th Street, Manhattan, New York; I.S. 258, 141 Macon Street, Brooklyn, New York; Franklin Lane High School, 999 Jamaica Avenue, Brooklyn, New York;

Columbus High School, 925 Astor Avenue, Bronx, New York; P.S. 16, 157 Wilson Street, Brooklyn, New York; J.H.S. 141, 37-11 21st Avenue, Queens, New York; P.S. 162, 201-02 53rd Avenue, Queens, New York; P.S. 178, 189-10 Radnor, Queens, New York; P.S. 94, 41-77 Little Neck Parkway, Queens, New York; P.S. 114, 1077 Remsen Avenue, Brooklyn, New York; P.S. 27, 529 St. Ann's Street, Bronx, New York.

113. On or about August 16, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from I.S. 113. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at I.S. 113 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

114. On or about August 5, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 127. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 127 at least 10 working days before commencement of the renovation activities as required by 40

C.F.R. § 61.145.

115. On or about September 2, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from New Utrecht High School. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at New Utrecht High School at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

116. On or about August 31, 1994, Asbestos Pro's commenced one or more renovation projects that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 196. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 196 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

117. On or about August 22, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Adams High School. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to

perform the renovation activities at Adams High School at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

118. On or about August 25, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 92. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 92 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

119. On or about August 5, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Newtown High School. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at Newtown High School at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

120. On or about August 17, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM,

from P.S. 57. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 57 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

121. On or about September 9, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from I.S. 258. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at I.S. 258 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

122. On or about August 6, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Lane High School. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at Lane High School at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

123. On or about September 10, 1994, Asbestos Pro's

commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from Columbus High School. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at Columbus High School at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

124. On or about August 18, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 16. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 16 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

125. On or about August 8, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from J.H.S. 141. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at J.H.S. 141 at least 10 working days before commencement of the renovation activities as required by

40 C.F.R. § 61.145.

126. On or about August 12, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 162. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 162 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

127. On or about August 6, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 178. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 178 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

128. On or about August 6, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 94. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the

renovation activities at P.S. 94 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

129. On or about August 7, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 114. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 114 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

130. On or about August 3, 1994, Asbestos Pro's commenced a renovation project that involved the removal of at least 260 linear feet of RACM, and/or at least 160 square feet of RACM, from P.S. 27. Neither the SCA nor Asbestos Pro's provided EPA with written notification of their intention to perform the renovation activities at P.S. 27 at least 10 working days before commencement of the renovation activities as required by 40 C.F.R. § 61.145.

131. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the SCA and Asbestos Pro's are each subject to a civil penalty of not more than \$25,000 per day per violation for

failing to provide EPA with written notice of the renovation projects in violation of 40 C.F.R. § 61.145(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully prays that this Court:

a. Enter judgment against the defendants on all claims for relief set forth herein, pursuant to 42 U.S.C. § 7413(b), imposing civil penalties;

b. Enjoin the defendants from further violations of the Clean Air Act and the Asbestos NESHAPS;

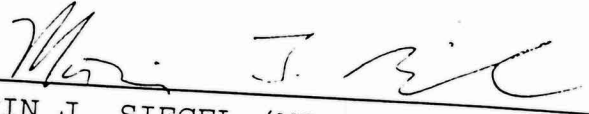
c. Award to plaintiff its costs, disbursements and attorneys' fees in this action; and


d. Award such other relief as this Court deems just and proper.

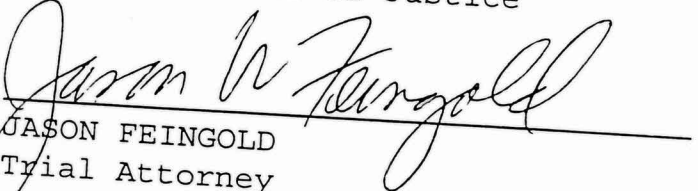
Dated: New York, New York
_____, 1998

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:


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EPA United States Environmental Protection Agency
Washington, DC 20460
Enforcement Case Data

02-94-0052 3/29/94 76
RESERVED FOR DATA ANALYST'S USE

Case No. Date Entered Analyst's Initial

CASE NAME (Lead or principal defendant, not site or facility name)

NEW YORK SCHOOL CONSTRUCTION AUTHORITY

STATE

NY

REGION

II

BRANCH

AIR AND WASTE MGMT

SECTION

AIR COMPLAINT

TYPE CASE



CIV = Civil



PRN



BNK = Bankruptcy



ACC = Access Order



COL = Collection Action

HQ DIVISION



AIR = Air



HAZ = Hazardous Waste (RCRA)



PES = Pesticides and Toxics



WAT = Water

LAWS/SECTIONS:

Use the Law/Sections violated; Not the Law/Section that authorizes the action.
Do not use USC or CFR designations.

1.42 USC 874112 + 7413 2 Sections 112 and 113 of the CAA

4.

1

5.

1

REGIONAL PROGRAM CONTACT (Last name)

SPINA

(1st init.)

Frank

Telephone Number

(212) 264-0885

REGIONAL ATTORNEY (Last name)

ARCH

(1st init.)

M

Telephone Number

FTS (212) 264-9193

DEFENDANTS

(All must be listed; attach list if necessary)

1.

2.

3.

SEE ATTACHMENT

REFERRAL WITH CONSENT DECREE? (CIV only)

☐ Yes

☒ No

Is this action to ENFORCE an ADMINISTRATIVE ORDER?

☐ Yes

☒ No

CATEGORY OF VIOLATOR

(Check appropriate category)

RCRA



SNC (Significant Noncomplier or Significant Violator)



NSHP (Non-SNC High Priority Violator)



MEDP (Medium Priority Violator)



LOWP (Low Priority Violator)

CWA



SNC (Significant Noncomplier or Significant Violator)



NSMJ (Non-SNC Major)



NSMN (Non-SNC Minor)



N/A (Not Applicable)

CAA



SV (Significant Violator)



NSV (Nonsignificant Violator)



N/A (Not Applicable)

TS/CA, FIFRA, SDWA



SNC (Significant Noncomplier or Significant Violator)



NSV (Nonsignificant Violator)

OTHER PROGRAM-SPECIFIC INFORMATION

(Check as many options as are applicable for the program on which the referral is based)

RCRA



GEN (Generator)



STR (Storage)



TRN (Transporter)



DSP (Disposal)



TRT (Treatment)

CWA



MUN (Municipal)



IU (Indirect User)



IND (Industrial)



404 (Dredge/Fill)



311 (Spill)

CAA



ATT (Attainment Area)



UCL (Unclassified Area)



NAT (Nonattainment Area)



N/A (Not applicable/NESHAPS)

SDWA-UIC



1HZ (Class I Hazards)



CL2 (Class II)



CL5 (Class 5)



CL1 (Other Class 1)



CL3 (Class III)



CL4 (Class 4 Ban)

FIFRA



COM (Commercial Applicator)



EXP (Experimental Use)



PVT (Private Applicator)

TS/CA



TS (Treatment/Storage)



DSP (Disposal)

FACILITY DATA FORM

* Please use the address of the site of violation (rather than the company mailing address or defendant's address).

* A separate form must be completed for each facility cited in the case.

CASE NO.: ____-____-____

EPA ID NO. _____

(Assigned by DOCKET)

(Assigned by FINDS)

81 facilities
Facility Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Ownership: _____
P: Private industry or individual
F: Federal Government
S: State
C: County
M: Municipal
D: District

Sic Code(s): _____
** At least one sic code is required. If you don't know the code, please provide the primary activity at the facility:

DEFENDANTS

- A. New York City School Construction Authority
30-30 Thomson Avenue
Long Island City, New York
11101
- B. Advanced Asbestos Removal Corporation
432 Bedford Avenue
Brooklyn, New York 11211
- C. Asbestos Pro's, Inc.
397 Fifth Avenue
Brooklyn, New York 11215
- D. Bali Industries, Inc.
2175 Lemoine Avenue
Fort Lee, New Jersey 07024
- E. Cati, Inc.
317 St. Paul's Avenue
Jersey City, New Jersey 07306
- F. Certified Asbestos Corporation
111-20 Jamaica Avenue
Richmond Hill, New York 11418
- G. Consolidated Environmental Corporation
1150 East New York Avenue
Brooklyn, New York 11212
- H. CST Environmental, Inc.
3210 Dell Avenue
North Bergen, New Jersey 07047
- I. EWT Contracting, Inc.
575 Washington Street
New York, New York 10014
- J. Linear Abatement Corporation
57-12 Grand Avenue
Maspeth, New York 11378
- K. LVI Environmental Services, Inc.
247 Huyler Street
South Hackensack, New Jersey 07606
- L. National Environmental Safety Company, Inc.
37-39 30th Street
Long Island City, New York 11101
- M. Trio Asbestos Removal Corporation
14-20 129th Street
College Point, New York 11356